

Raymond P. Niro
Vasilios D. Dossas
NIRO, SCAVONE, HALLER & NIRO
181 West Madison Street, Suite 4600
Chicago, Illinois 60602
(312) 236-0733

Gregory D. Phillips (4645)
Kevin A. Howard (4343)
HOWARD, PHILLIPS & ANDERSEN
560 East 200 South, Suite 300
Salt Lake City, Utah 84102
(801) 366-7471

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

PHILLIP M. ADAMS & ASSOCIATES,
L.L.C., a Utah Limited Liability Company,

Plaintiff,

vs.

DELL INC., FUJITSU LIMITED,
FUJITSU COMPUTER SYSTEMS
CORP., MPC COMPUTERS, LLC, and
SONY ELECTRONICS INC.,

Defendants.

**ADAMS' MOTION FOR SANCTIONS
AGAINST SONY INCLUDING
TERMINATING SANCTIONS BASED
UPON SONY'S SPOILATION OF
EVIDENCE OF SONY'S PIRACY**

Civil No. 1:05-CV-64

The Honorable Ted Stewart
Magistrate Judge David Nuffer

Phillip M. Adams & Associates ("Adams") brings this motion against defendant Sony Electronics, Inc. ("Sony") for terminating sanctions based upon Sony's spoliation of evidence that would have demonstrated Sony's piracy of Adams' patented technology.

Sony has clearly been put on notice that this Court will not tolerate such spoliation. Sony sought to intervene in the Gateway litigation [Adams v. Gateway, Dkt No. 568], and Sony, in fact, obtained copies of all of the Court's Orders (sealed and unsealed) regarding Gateway's spoliation of evidence and other misconduct including this Court's "warning" [Dkt Nos. 581 and 582]. Thus, Sony was "warned" by this Court that the spoliation of evidence could result in terminating sanctions. E.g., Dkt No. 484, Memorandum Decision and Order at 17-18 (including the "warn[ing] that if there is further evidence that is missing or tardily disclosed, or if it engages in further conduct that impedes the disclosure or discovery of relevant evidence further severe sanctions, including entry of judgment, shall be imposed.")

Despite this clarion warning, Sony has engaged in conduct that is just as egregious as Gateway's misconduct. Sony has lost or destroyed the most critical evidence in this case. This destroyed and lost evidence would have demonstrated Sony's piracy of Adams' patented technology. Because of Sony's spoliation of evidence, Adams respectfully requests that this Court enter judgment against Sony on liability issues, and that this Court hear Adams' claims for the amount of damages.

Therefore, for the reasons outlined in the supporting memorandum, Adams respectfully requests that the Court grant this motion.

STATEMENT OF EFFORTS MADE TO REACH AGREEMENT

Pursuant to DUCiv.R 37-1, counsel for Adams has made reasonable efforts to reach an agreement with opposing attorneys to produce the spoliated documents and evidence. Those efforts are outlined in detail in the factual statement of the Memorandum filed concurrently herewith which include a meeting on May 1, 2007,

where Dr. Adams, his counsel, and Sony's in-house and litigation counsel met in New York City.

DATED: May 29, 2007.

HOWARD, PHILLIPS & ANDERSEN

s/Gregory D. Phillips

By: Gregory D. Phillips
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **ADAMS' MOTION FOR SANCTIONS AGAINST SONY** was served on the following via email on May 29, 2007.

Benjamin J. Bradford
Matthew W. Neumeir
Reginald J. Hill
Jenner & Block
One IBM Plaza
330 North Wabash Avenue
Chicago, Illinois 60611

Terry E. Welch
Darren K. Nelson
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111-1537

Michael A. Jacobs
Parisa Jorjani
Shane Brun
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

Sterling A. Brennan
David R. Wright
Janna Lewis
Workman Nydegger a
Professional Corporation
1000 Eagle Gate Tower - 60 E. South Temple
Salt Lake City, Utah 84111

Attorney for Fujitsu Computer Systems Corp. and Fujitsu Limited

Michael S. Dowler
Brian L. Jackson
Howrey LLP
1111 Louisiana – 25th Floor
Houston, Texas 77002

Jeremy O. Evans
Huntsman Evans
Christansen & Lofgran, PLLC
3995 South 700 East, Suite 400
Salt Lake City, Utah 84107

Attorneys for MPC Computers, LLC

Kevin B. Johnson
Michael William Gray
Todd M. Briggs
Quinn Emanuel Urquhart Oliver
& Hedges
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065

Rick B. Hoggard
Arthur B. Berger
Ray Quinney & Nebeker P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Attorneys for Sony Electronics Inc.

Erik A. Olson
J. Mark Gibb
R. Stephen Marshall
Durham Jones & Pinegar
111 E Broadway, Suite 900
Salt Lake City, Utah 84111
(801)415-3000

Attorneys for Third-Party Defendant Asutek Computer and Asus Computer International

Gary C. Ma
Richard Chae
Sean P. DeBruine
Yitai Hu
AKIN GUMP STRAUSS HAUER & FELD
TWO PALO ALTO SQ
3000 EL CAMINO REAL STE 400
PALO ALTO, CA 94306
(650)838-2026

Christopher B. Snow
Jennifer A. James
Neil A. Kaplan
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216

Attorney for Third-Party Defendant Winbond Electronics Corporation

s/Julianne Partridge
Howard, Phillips, & Andersen